

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA  
LAND CASE NO. 05 OF 2020**

**THE BOARD OF REGISTERED  
TRUSTEES OF ASSEMBLIES OF GOD ..... PLAINTIFF**

**VERSUS**

**MCHUNGAJI VINCENT S. MALENDI ..... 1<sup>ST</sup> DEFENDANT**

**AGAPE GOSPER INTERNATIONAL CENTRE  
ASSEMBLIES OF GOD ..... 2<sup>ND</sup> DEFENDANT**

**THE REGISTERED TRUSTEES OF  
CALVARY ASSEMBLIES OF GOD ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

*3<sup>rd</sup> August 2021 & 22<sup>nd</sup> February, 2022*

**M.M. SIYANI, J.**

The Plaintiff instituted a suit against the defendants over the ownership of a piece of land known as plot number 2 & 3 Block B, Kisasa "C" centre, Dodoma Municipality. In their joint written statement of defence, the defendants raised preliminary objections on point of law as follows:

- 1. That, the plaintiff's complaint does not disclose the cause of action against the defendants herein.*
- 2. That the suit is incurably defective for non-joinder of proper and necessary parties known by the name City council of Dodoma, commissioner for lands and or suing wrong party.*
- 3. The suit is an abuse of court process as there is existing of criminal investigation with RF No. DOMR/CID/PE/30/2020 before the office of Regional Police Commander at Dodoma on fraud against the defendants and the Plaintiff is the complainant in which the relief sought can be obtained from the said criminal case in the event the defendants are found guilty.*

The plaintiff is represented by Michael Rugaiya, learned advocate. The defendants enjoy the professional service of Justin Kaleeb, learned advocate. Before the objections were heard, the defendant's counsel abandoned the third ground of appeal.

On the first preliminary point of objection counsel for the defendant submitted that the complaint does not disclose the cause of action because it

just narrates events without disclosing any actionable wrongful acts committed by the defendant against the plaintiff. He cited several cases including **John Byombalirwa vs Agency Maritime International** [1983] TLR 2, **Tanzania China Friendship Vs Our Lady of Usambara**, Civil appeal No. 84 of 2002 and **Mukisa Biscuits Vs Westland Distributor** [1969] E.A. 701 to buttress his argument that a plaint which does not disclose a cause of action ought to be struck out.

On the 2<sup>nd</sup> limb of the objection the learned counsel submitted that due to the nature of the claim the CDA and Commissioner for Lands are necessary parties to this case who shall assist the court to effectively adjudicate the matter and their none joinder makes the plaint defective. The case of **Abdultif Mohamed Hamis Vs Fatma Mohamed and another**, Civil Revision No. 6 of 2017 CAT, **Juma Kadela Vs Laurent Nkande**, [1983] TLR 5, **Depoted Asian Property Custod Board Vs Japhary Brothers Ltd** [1999] Vol. 1 E.A. 55 and **Jumuiya ya Wafanyakazi Tanzania Vs Kiwanda cha Uchapishaji cha Taifa** [1988] TLR 146 were cited in support of the argument.

In response, Mr. Rugaiya submitted that the first point of preliminary objection is not a pure point of law as its determination would require the



court to look into facts of the case. He further argued that in case the court agree with the objection, he prayed the plaintiff to be allowed to amend the plaint. On non-joinder of parties, he referred the court to the case of Abdullatif **Mohamed Latif Vs Mehboob Yusuf and another**, Civil revision no. 6 of 2017, Court of Appeal – Dar es Salaam (unreported) where it was stated that no suit shall be defeated by reason of non-joinder of parties because remedies are available under order VII of CPC.

Does the plaint not disclose the cause of action? The plaintiff's claim is clear that the defendants have unlawfully and fraudulently misappropriated the plaintiff's property/land. This is enough cause of action and I, therefore, answer the question in the negative.

On non-joinder of parties, it is my view that the claim is based on allegation that the first defendant registering the property in the name other than that of the plaintiff for whom he worked. According to annexure CAG.8 on the WSD the title to the land was issued by the relevant authority to the third defendant. The third defendant, according to annexure CAG.9 to the WDS, was duly incorporated in March, 1995. Therefore, the land authority issued the title deed to a society fully incorporated with legal capacity to own land. The issue whether the first

defendant ought to have applied for the title deed in the name of the plaintiff not the third defendant does not concern the land authorities but parties themselves. Therefore, considering the fact of this case, neither the CDA nor the land commissioner is necessary parties to this case. The second objection has no merits too.

In the fine, both objections are without merits and consequently the same are hereby overruled with costs.

**DATED at DODOMA** this 22<sup>nd</sup> day of February, 2022.



**M.M. SIYANI**  
**JUDGE**